



INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH IN PROGRESSIVE EDUCATION & DEVELOPMENT



A Legal Analysis of Stateless Children and Their Rights to Education in Malaysia: A Comparative Study with Thailand

Nadzarina Hani Rostam, Nur Husnina Ahmad, Nur Shahira Aliah Mohammad Murshid, Rania Nabihah Mohd Attas, Nur Ezan Rahmat & Atifah Othman

To Link this Article: <http://dx.doi.org/10.6007/IJARPED/v11-i3/14899>

DOI:10.6007/IJARPED/v11-i3/14899

Received: 17 July 2022, **Revised:** 22 August 2022, **Accepted:** 06 September 2022

Published Online: 24 September 2022

In-Text Citation: (Rostam et al., 2022)

To Cite this Article: Rostam, N. H., Ahmad, N. H., Murshid, N. S. A. M., Attas, R. N. M., Rahmat, N. E., & Othman, A. (2022). A Legal Analysis of Stateless Children and Their Rights to Education in Malaysia: A Comparative Study with Thailand. *International Journal of Academic Research in Progressive Education and Development*, 11(3), 1711–1726.

Copyright: © 2022 The Author(s)

Published by Human Resource Management Academic Research Society (www.hrmars.com)

This article is published under the Creative Commons Attribution (CC BY 4.0) license. Anyone may reproduce, distribute, translate and create derivative works of this article (for both commercial and non-commercial purposes), subject to full attribution to the original publication and authors. The full terms of this license may be seen at: <http://creativecommons.org/licenses/by/4.0/legalcode>

Vol. 11(3) 2022, Pg. 1711 - 1726

<http://hrmars.com/index.php/pages/detail/IJARPED>

JOURNAL HOMEPAGE

Full Terms & Conditions of access and use can be found at
<http://hrmars.com/index.php/pages/detail/publication-ethics>



INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH IN PROGRESSIVE EDUCATION & DEVELOPMENT



www.hrmars.com

ISSN: 2226-6348

A Legal Analysis of Stateless Children and Their Rights to Education in Malaysia: A Comparative Study with Thailand

Nadzarina Hani Rostam¹, Nur Husnina Ahmad², Nur Shahira Aliah Mohammad Murshid³, Rania Nabihah Mohd Attas⁴, Nur Ezan Rahmat⁵ & Atifah Othman⁶

^{1,2,3,4,5} Faculty of Law, Universiti Teknologi MARA (UiTM), 40450 Shah Alam, Selangor, Malaysia, ⁶Dengkil Campus, Universiti Teknologi MARA (UiTM), 43800 Dengkil, Selangor, Malaysia.

Corresponding Author's Email: nurezan@uitm.edu.my

Abstract

Statelessness has been a substantial issue around the globe, including Malaysia, yet the rights to education for the stateless is often overlooked. The discussion on the stateless rights to nationality remains endless, and the possibility for them to possess such rights in the near future is fairly low. Thus, this research seeks to find ways to ensure stateless children can still have access to education regardless of their inability to acquire citizenship. In that regard, this paper further analyses the laws and policies governing stateless children's rights to education in Malaysia and Thailand and propose amendments. This research found that undocumented children in Malaysia are allowed to enrol in public schools under the Professional Circular 2009 and the Zero Reject Policy 2019 which is still enforced. Nevertheless, such policies are still inadequate compared to the 2005 Cabinet Resolution Policy in Thailand. Through the doctrinal research on Malaysian, Thai and international laws, this paper found that the laws in Malaysia are not sufficient to ensure the rights to education of stateless children is protected and it is suggested that the Malaysian government should amend the existing laws and policies to resolve the issue.

Keywords: Stateless Children, Rights to Education, Public School, Laws and Policies

Introduction

Statelessness is a widespread legal problem globally, including Malaysia, and it is particularly common in West Malaysia. Stateless people can be defined as a group of persons who lack legal identification and are unable to relate to any citizen of any country (Samad & Badrol, 2018). As for stateless children, they are juveniles who are not recognised as citizens and are deprived of any safeguards provided for a regular child. Moreover, since these undocumented children cannot prove their citizenship, their position on the right to receive education in Malaysia is also different compared to citizens. Even though the Minister of Education issued

Professional Circular 1/2009 that allows admission of stateless children to public school, some conditions must be fulfilled (Samad & Badrol, 2018). Similarly, for the corrective measure, a policy introduced in 2019 by the government to help stateless children enrol into public schools, also includes restrictive conditions (Bernama, 2018). Other alternatives were also provided by Non-Governmental Organisations (NGOs) to establish learning centres in Malaysia. Nevertheless, Malaysia's reservation on Article 28 of the United Nations Convention on the Rights of the Child (CRC), which highlights that all children should be given access to education, affects the government's effort to ensure education for stateless children. Basic human rights are not made available to stateless children merely due to being less fortunate such as having stateless parents or parents who failed to register their birth. Therefore, this study seeks to uncover and examine the current laws and policies governing stateless children and their education rights in Malaysia and Thailand. This study also aims to seek and propose recommendations to reform the current laws and policies in Malaysia.

Literature Review

Upon reviewing literatures on stateless children's right to education, the most significant theme is the concept of statelessness. Stateless children are defined as juveniles that are unable to relate to belonging to any nation (Samad & Badrol, 2018). Common factors causing statelessness include being an orphan, abandoned and an illegitimate child (Razali, et al., 2015). This also relates to the strict conditions in the Federal Constitution of proving the legality of the marriage of the child's biological parents before citizenship is granted (Razali et. al., 2015). It is apparent that Malaysia's current citizenship law need more focused interpretation and specialisation. Additionally, statelessness also appears in cases of adopted children, particularly when their biological parents are untraceable. Adoptive parents to stateless children may resort to make an application for citizenship under Article 15A Federal Constitution, which enables children under the age of 21 years old to be conferred citizenship under special circumstances, based on the discretion of the Home Ministry. This, however, is a lengthy process that could take years and deprives the child from basic rights (Hasni et al., 2021; Rahmat et al., 2021).

As this research focuses on the stateless' right to education, it is found that there are various policies that provide protection for stateless children which includes Article 28 of the CRC, Article 26 of the Universal Declaration of Human Rights (UDHR) and the UNESCO Convention against Discrimination in Education which highlights that quality education shall be available freely at elementary and fundamental phases and is a compulsion to every child. It was highlighted by Mustaffa et al (2022) that the state parties of the CRC are expected to make necessary arrangements in order to provide free primary education to all children. Nevertheless, such protections cannot be enforced as Malaysia did not ratify the convention by UNESCO and reserved Article 28(1) of the CRC. It is highlighted by several authors that the reservation of Article 28(1) of CRC, is because it contravenes Article 12 of the Malaysian Federal Constitution which limits the right to education for citizens (Samad & Badrol, 2018; Rahmat et al., 2021; Hasni et al., 2021). The reservation is also scrutinised by the Malaysian Bar, as it was of the view that this would only add unnecessary bureaucracy that would complicate the lives of these stateless children and make it even more arduous. Without formal education, the stateless children would be affected adversely (Bashir, 2021). Thus, extensive research should be done to find ways in preventing unfairness due to nationality towards children in Malaysia.

Upon reaching out to community groups in rural areas in Malaysia, SUHAKAM reported that one of the majority concerns raised by the community is on stateless children's access to education as they are being denied such basic rights (Human Rights Commission of Malaysia, 2020). Authors such as Hasni et. al (2021); Rahmat et. al (2021) believe that the best way to ensure the stateless children have access to education is by granting them citizenship. However, the authors also acknowledged that this would cause major changes to the current laws and policies, thus a special admission for the stateless to acquire education should be further considered. It is highlighted by Loganathan et al (2022) that the government also allows informal or alternative education systems through learning centres run by NGOs. These learning centres, however, are not allowed to use the Malaysian syllabus since they are not recognised by the MOE and the certificate of completion is also not recognised in Malaysia and elsewhere (Loganathan et al., 2022). This hinders stateless children from pursuing their education to a higher level and from obtaining a formal job.

There are a few efforts done by the Malaysian government to help undocumented children to gain education such as the *Sekolah Bimbingan Jalinan Kasih* (SBJK) and the Professional Circular 1/2009 policy. However, children with no Malaysian parents are still deprived as the pupils must have at least one Malaysian parent to enrol. A new policy was introduced in 2019 regarding undocumented children's admission to public schools, but there is a lack of exposure relating to this policy. The newly introduced policy was in line with the aims of the national education policy to ensure that all children have access to education. However, the implementation of the 2019 policy only applies to a small subset of stateless children, those with at least one Malaysian parent only (Loganathan et al., 2022). Although efforts have been made, there are still no formal law or policies for stateless children and Alternative Learning Centres provided by NGOs are also yet to be formally recognised in Malaysia (Selvakumaran et al., 2020). Therefore, this policy should be further scrutinised in order to include these stateless children.

Besides, in Malaysia, only citizens are made compulsory to attend primary school (Samad & Badrol, 2018; Rahmat et al., 2021). In comparison with Thailand, regardless of their parents' status, children born in Thailand will be given citizenship and primary education is compulsory including for stateless children as mandated in the 1997 Constitution and provided in the National Education Act of 1999, the right to a full 12 years of free, high-quality primary education, the first nine of which are required (Park, et al., 2009). The fees, subsidies for textbooks, uniform and other needs are also sponsored by Thailand's Government (Loganathan et al., 2022). According to Kitchanapaibul et al (2022), stateless children who attend school and are able to speak Thai fluently can free themselves from the stigma attached to the stateless. Therefore, a comparative study between Malaysia and Thailand should be further delved into to find possible policies that Malaysia can similarly adopt as Thailand is also a signatory party of the CRC.

This literature review reveals that there are limited works of literature that have addressed the suitability of Malaysia's current educational laws and policies for stateless children. Therefore, to fill in the gap regarding regulation of stateless children's right to education, this study proposes guidelines for stateless children's enrolment in public schools.

Methodology

The research employs qualitative research methodology by collecting and analysing non-numerical data. Furthermore, this study also includes both doctrinal and non-doctrinal research. Doctrinal research includes the primary and secondary sources of law. The legislation that closely governs the rights to education, such as the Malaysian Federal Constitution, Malaysian Education Act 1966 and Thailand's National Education Act of 1999 were referred to as the primary sources of law to discover the position of stateless children. The secondary sources of law concern the analysis of journal articles, online newspapers, cases, reports and conventions such as the UNHCR and the CRC. The importance of the doctrinal research is to examine the current laws governing the rights of stateless children to education in Malaysia and Thailand and the current policies of the United Nations. The legal texts and literary works are interpreted to determine the meaning, then applied to the local circumstances, and it is analysed to be the findings.

The non-doctrinal research incorporates empirical studies through semi-structured interviews. In this study, interviews have been conducted to acquire the respondents' opinions and experiences, and the data from the interviews were compiled to get answers and generate new ideas. Opinions regarding the adequacy of current laws and policies governing stateless children and their rights to education in Malaysia were collected and, simultaneously, obtained recommendations to reform the existing laws and policies. It is to be noteworthy that these empirical studies have enabled the researchers to understand and observe any underlying reasons and the justifications behind the views made by the respondents. Despite the limits on the number of respondents due to the pandemic, the selection of respondents is heavily influenced by their objectives and their legal capacity in terms of reformation of law which is in line with this study's goal.

Comparative research analysis was also conducted wherein the laws and policies governing stateless children in Malaysia and Thailand are compared. The law in Thailand is the benchmark in this study as the development of Thailand's law received compliments acknowledging stateless children's rights to education as they mandated 15 years of free education for all children, regardless of nationality.

Discussion and Findings

A stateless is a person who is not considered a national by any state's operation of law provided under Article 1 of the UNHCR's Convention Relating to the Status of Stateless Persons. It is highlighted that a group of people is most vulnerable to becoming stateless when countries exercise de facto authority in refusing to confer any nationality to certain persons within their territory. Statelessness first came to prominence after World War II, when millions of refugees and stateless people were stripped of their citizenship (Berkeley, 2009). Because of that, the Universal Declaration of Human Rights (UDHR) was drafted to uphold that "everyone has a right to a nationality" and "no one shall be arbitrarily deprived of his nationality" (Berkeley, 2009).

Statelessness correlates directly with the absence of legal identification, which is the birth certificate. The significance of a birth certificate is that it provides permanent, official, and visible evidence of a state's legal recognition of its existence as a member of society (Rahmat et. al., 2021). The failure to give a birth certificate to a child or deny access to register the

birth of a child would result in a state's discriminatory act where the child would be unclaimed by the state, hence the hike in statelessness (Ujvari, 2017). A 2019 study related to a 39-year-old permanent resident of Malaysia who lived here his whole life shows statelessness is likely to affect future generations of a family as the person with his five children is all stateless (Liew, 2019).

In Malaysia, there are roughly six classifications of stateless persons (Liew, n.d.), and there are four main groups of people described as either stateless or at the risk of being stateless named Malaysians of Indian descent, members of the traditionally nomadic, *Bajau Laut* community, the children of refugees and migrants in Sabah, North Borneo, and Rohingya refugees from Burma (Allerton, 2014). It is difficult to state the exact number of stateless people in Malaysia hence the exact number of stateless children as of today is still vague (Nortajuddin, 2020). On top of that, a study conducted in 2009 by the Ministry of Education under Article 28(1) CRC shows that there were 43,973 undocumented children which refer to those who lack birth registration aged 7 to 17 years old who are out of school (Allerton, 2014). Hence, it is reasonable to expect a larger number of undocumented children in Malaysia who do not have access to education today.

The Development of Human Resources in Rural Areas (DHRRA) has carried out the mapping and legal aid project on 12,400 stateless persons inhabiting West Malaysia, whereby 12,078 nationality applications have been submitted to the National Registration Department (NRD). Regrettably, only 2,359 persons have obtained nationality. This number only includes stateless people in West Malaysia; thus the number of stateless people in East Malaysia is still unknown (UNHCR, n.d.). Even so, there is an area known as *Kampung Numbak*, which was found on the coast of Sabah, resided by migrants from the Philippines and Indonesia, wherein 3,000 out of nearly 5,000 inhabitants hold Malaysian citizenship.

Reasons for Statelessness

The common cause of statelessness in Malaysia is when new parents fail to register their marriage and the child's birth because they lack knowledge of the importance of their marriage registration towards the child's citizenship (Liew, 2019). In the absence of citizenship, a person is considered stateless, and they are not members of the country (Cambridge University Press, n.d.). Hence in Malaysia, statelessness correlates with citizenship, and it can be seen under the Federal Constitution. Article 14 emphasised by way of operation of law, Articles 15,15A,16, and 16A by way of registration, Article 19 by naturalisation and Article 22 by incorporation of territory.

Article 14(1)(b) highlighted that a person gains citizenship automatically by law if born on or after Malaysia Day, having at least a parent who is a Malaysian citizen or a permanent resident. However, if a child is born in a family where the parents are not legally married, they will attain his mother's citizenship (Liew, 2019). To gain citizenship under Article 14, the requirements laid under Part II of Schedule II of the Federal Constitution must be fulfilled. The case of *Madhuvita Janjara Augustin (Suing Through Next of Friend Margaret Louisa Tan) v Augustin A/L Lourdasmy & Ors* (2018) reflects the court's decision in upholding the child as a citizen by operation of law under Article 14(1)(b) which is read with Part II Section(1)(a) where one of his parents at the time of his birth was either a citizen or a permanent resident (Selvakumaran et al., 2020). In contrast, in the case of *Pendaftar Besar Kelahiran Dan*

Kematian, Malaysia v Pang Wee Swee & Anor (2017), citizenship was not granted even though the child's adoptive parents were Malaysians since the child's biological parents are untraceable, leading to the failure in fulfilling the requirements under Article 14(1)(b) (Selvakumaran et al., 2020). This shows that such a requirement seems to have its setbacks.

People may also gain citizenship through registration, where Article 15 specifies on this issue. On top of that, as emphasised in Article 15A, the Federal Government has the discretionary power to grant citizenship to anyone who is less than 21 years old. Nevertheless, it does not guarantee that a stateless child may attain citizenship since it is based on the minister's desire to register them as they were given discretionary power to do so (Liew, 2019). The citizenship is also subject to revocation, and no reasons are required to be given if the minister were to reject the application (Tah, 2021). It is a very lengthy process (Mayberry, 2014) and has a low success rate (Lim, 2019). Up until 2017, a child in Malaysia had never been given citizenship under such circumstances (Allerton, 2017). Hence, obtaining citizenship under the Federal Constitution is not easy and a long process, causing stateless children to lose their opportunity to receive education if their application is unsuccessful until they have passed the age of entering school.

The effects of statelessness are stateless persons are frequently deprived of access to basic services as well as formal education and public healthcare systems (Milbrandt, 2011). A 'child' in Malaysia is a person under the age of eighteen (Child Act 2001), and a child would naturally create a vulnerable image and must possess human rights to safeguard themselves due to a lack of physical and mental maturity (Taib, 2012). Although Child Act 2001 emphasises that a child is safeguarded from any discrimination such as education, healthcare services, access to amenities, and social facilities nonetheless, the reality is that a child without a Malaysian nationality is still deprived of fundamental rights (Taib, 2012; Soh et al., 2019).

Out-of-school children refer to primary-school-age children who should be in school yet are not (United Nations Educational, Scientific and Cultural Organization, 2005) face a greater risk of exploitation where they are found to be forced onto the streets to work and earn a living. Besides, they often experience violence, abuse and being easily lured into gangs to be exploited to do harmful activities such as glue sniffing, gambling, and drug peddling (United Nations Children's Fund, 2015). The undocumented children in *Kampung Numbak* who are underprivileged to gain education were often left by themselves, wandering, and playing around, and some had gotten involved in smoking and sniffing glue (United Nations Children's Fund, 2015).

An orphan stateless Tamil boy, from Malaysia, who grew up without proper care and was unable to attend school had ended up becoming a drug and alcohol addict (United Nations High Commissioner for Refugees 2015). Only if the boy had gone to school, he is confident that he would not have picked up those bad habits and could be chasing his dreams to be a football player. Thus, SUHAKAM emphasised that refugee children should receive formal education to ensure children stay away from negative social issues (Human Rights Commission of Malaysia, 2020). Furthermore, UNESCO also suggested that child marriage can be prevented by sending girls to school (United Nations Educational, Scientific and Cultural Organization, 2014). In order to tackle the issue of child marriage, SUHAKAM suggested that the Malaysian

government widen the opportunities for girls to obtain education (Human Rights Commission of Malaysia, 2020).

Education is considered the most efficient way for a child to improve themselves. Giving an opportunity for education will make children become more mature and educated to the extent that they can contribute to the nation that they live in. Therefore, regardless of nationality, children should not be deprived of education as they are absorbing sponges whereby having an education can unleash their potential.

Malaysian citizenship laws operate on a *jus sanguinis* basis which states that nationality is a right by blood, and this is well reflected in Article 14(1)(b) of the Federal Constitution. This has led to many years of stateless generation, particularly in rural areas of west Malaysia, where statelessness affects generations (Liew, 2019), where inevitably, many young souls lose the opportunity to receive education. In comparison, Thailand integrates both *jus sanguinis* and *jus soli* in its nationality, where the Thailand Nationality Act 2008 allows citizenship to be attained by the descent of parents' citizenship, birth or naturalisation (Ketchell, 2020). Unlike Malaysia, Thailand's *jus soli* principle has potentially reduced the risk of statelessness amongst young children, as naturalisation is permissible without setting any age limit.

It is, however, noteworthy that Thailand's birth registration documentation is deficient in comparison to Malaysia, which shows that Thailand, too, has not escaped from the shackles of statelessness (Allerton, 2017). It should also be noted that Malaysia transcends Thailand in documenting late birth registration, simultaneously showing Malaysia's effort in curbing the statelessness issue of its people despite the strict ambit of Article 14 that still limits the granting of citizenship to those without Malaysian descent (Sabah Registration of Births and Deaths Ordinance 1966). Pertinent to this, a direct comparison between Malaysia and Thailand's policy relating to stateless' children's rights to education is discussed below.

Therefore, this paper aims to examine the laws and policies relating to education in Malaysia and suggest amendments to them in order to ensure stateless children can still have access to education regardless of their inability to acquire citizenship.

Laws and Policies Relating to Education of Stateless Children in Malaysia and Thailand

The essence of Malaysia's Education Act 1967 centralises around Article 12 of the Federal Constitution, which upholds the position and guarantees the rights to education for Malaysian children, 'where there be no discrimination against any citizen on the grounds only of religion, race, descent or place of birth'. In pursuant to the introduction "Education for All" Campaign by UNESCO, Malaysia had made an effort to include stateless children into the education system wherein the Ministry of Education had implemented Professional Circular Letter No. 1/2009 dated 11 March 2009, which enables stateless children with one Malaysian citizen parent to be enrolled into public and government aid schools, provided that such an application is accompanied by a testimonial letter produced by Head Village (SUHAKAM, 2018). This Circular, however, is heavily subjected to and dictated by the requirements given by the Immigration Department, and it inherently excludes children without Malaysian parents.

In 2018, the Malaysian government further developed and introduced the Zero Reject Policy, which was then implemented in 2019, which allowed the enrolment of stateless and undocumented children without interference from the Immigration Department or unnecessary arbitral restrictions. The newly implemented policy aims to ensure that special needs children and undocumented children will have access to education and not be left out of schooling (Rasyid, 2020). As purported by the Former Education Minister, merely four months after the implementation, there has been a record of 2635 undocumented children enrolled in schools, which further solidifies the notion that these stateless children are eager to learn but rather are being deprived of a chance to education (Bernama, 2019). However, the Zero Reject Policy 2019 still requires the production of one Malaysian parent's Identification Card, which exemplifies the exclusion of stateless children without any citizen parent. This exclusion criterion, whether intentional or not, may give rise to possible discrimination which deprives stateless children of their education.

Malaysia's Education Act 1967, at its core, provides that all citizens shall be entitled to free education in public schools for 11 years, incorporating primary and secondary school years, which further upholds their position to provide free education to their citizens without discrimination. 6 years out of the 11 years of schooling, primary education is made compulsory, whereby any parents who fail to ensure their offspring obtain primary education can be subjected to a sanction (Education Act 1996). However, Malaysia's national education policy fails to consider the stateless and, by virtue, excluded undocumented children from the free compulsory education.

In Thailand, a more progressive measure is being taken by the Thai Government, where all children in Thailand attain the right to education regardless of their nationality status. In 2005, the Royal Thai Government Cabinet Resolution for Unregistered Persons led to the availability of rights to an education at all levels for children without legal status, including the stateless. As such, the EFA was introduced in 1999 and allowed participation of unregistered or stateless children at every level of education, in both public and private institutions, with the issuance of academic credentials upon completion (The Thai National Commission for UNESCO, 2020).

Similar to Malaysia, Thailand enacted a law in 1997 which ensures all citizens of Thailand are eligible to receive free, quality and basic education for 12 years, which was then increased to 15 years in 2019. Nine out of the 15 years of schooling are made compulsory starting from 2012 onwards (Fry, 2020). Unlike Malaysia, the years of compulsory education offered by Thailand are inclusive of lower-secondary education (US Department of State, Thailand, 2020). More pertinently, in contrast to Malaysia, the free and compulsory education programme in Thailand seeks to include stateless children as well, from 2005 onwards (Park, 2020).

The two countries align in parallel with their core values, where both Malaysia and Thailand uphold the merits of education, and this is reflected in their legislations. It is undeniable that the two countries acknowledged that education is compulsory and should be made free for its people, and as such, parents who had failed (whether deliberately or not) to ensure their children were admitted into schools, especially at the primary level, shall be penalised. Nevertheless, in the early stage of education development, these two neighbouring countries fail to include marginalised stateless children in their education plans. Due to their

commitments to the United Nations Convention Relating to Statelessness, both Malaysia and Thailand have made active improvements to their respective education law to ensure that it benefits not only their people but the stateless as well.

As aforementioned, Malaysia's Zero Reject Policy has allowed stateless children with one Malaysian parent to enrol in public schools, where one of this policy's significant advantages is that the admission of stateless children will no longer be primarily dictated by the Immigration Department's requirements. Even so, this policy had its downside, wherein it only caters a small group of stateless children, that are those with one Malaysian Parent. As such, this policy does not fully serve its purpose of eradicating the lack of access to education amongst the stateless, as most stateless children do not possess a Malaysian parent. Statelessness, as explained, is a systemic issue that affects generations, and as such, a margin of the stateless children that also came from a stateless parent would not be able to reap the benefits from this policy.

On the other hand, in combatting and including stateless children in their education plan, Thailand made a major alteration to its education law wherein Thailand's EFA Policy and Cabinet Resolution had rendered all children, including the stateless, access to formal education. Contrary to Malaysia's Zero Reject Policy 2019, Thailand's policy truly embraced the idea of *education for all*, where there is no restriction or arbitrary prerequisite that is imposed which filters out the stateless children. Under the Thailand Policy, every child has equal access to education, which is the primary goal of this study, and with that, is a structure of law that should be modelled upon.

Even unintentional selective inclusion can be deemed as exclusion (Jamil, 2021), and thus, it is vital for Malaysia to ensure that our education system does not overlook these stateless children. The exclusion criterion set by the government in admitting stateless children into public schools to a certain extent may give rise to possible discrimination towards the stateless, and although the Zero Reject Policy 2019 had managed to increase the number of admissions of stateless children into public schools, scholars and volunteers in the field largely believe that the policy should be open to criticism and should be improved. One common criticism that can be observed is that Malaysia should not have limited the enrolment of stateless children with Malaysian parents only. Every child deserves the right to education and should not be subjected to discrimination due to their status. Hence, the government must take an undertaking to consider amending the said restriction (Tah, 2021).

Conclusion & Recommendations

Although statelessness is often associated with the issue of nationality, the impact of the lack of nationality on stateless children's education is also alarming. Stateless children's deprivation of basic human rights due to their absence of nationality deserves to be in the limelight. By allowing stateless children access to education, statelessness can be better handled in our country. Even though there is an existing policy governing undocumented children's admission to public schools in Malaysia, such a policy still deprives stateless children who are born to two stateless parents. This education scheme has yet to include the majority groups of stateless children living in Malaysia. Thus, a reformation of public school admission policies should be considered by the Malaysian government. In doing so, this study has extracted policies adopted in Thailand as a yardstick for the ones to be applied in

Malaysia. The issue of statelessness in Thailand continues to be unresolved, yet giving the right to every child an equal chance to education regardless of nationality status has been a concern since the year 2005. This gives light on the idea of resolving stateless children's deprivation of education, without needing to wait for the issue of nationality to be ironed out first.

Struggles faced by stateless children and the importance of education to shape them require utmost attention by the government. Although the struggles can be seen to be mitigated by NGOs' efforts, their assistance is limited and not comprehensive to ensure stateless children obtain an education. The Malaysian government must step in and implement a broader framework to ensure the Education for All policy is correctly practised in Malaysia and no child is left behind. By analysing issues that arise within the stateless community, the legislation and legal frameworks by the Malaysian government, and the current situation in Malaysia's neighbouring country, Thailand, it is best for Malaysia to take a step forward. This study hopes that the recommendations put forward will be considered by the government. The study also adds to the literature to help close the gaps in knowledge regarding stateless children and their educational rights. In addition, with the appointment of a Children's Commissioner in August 2019, which is the Malaysian government's effort to protect children's rights, especially against discrimination as per the CRC (Human Rights Commission of Malaysia, 2020), it is hoped that stateless children's right to education would also be included in the commissioner's focus.

As analysed throughout the study, Thailand can be an excellent benchmark to tackle the governance of stateless children's education rights. Firstly, the governance of the Education For All policy by Thailand can be a reference for Malaysia. This is where there should be no discrimination against any child regardless of their nationality status. Although the Malaysian government had laid down the 2019 Zero Reject Policy, it is suggested that Malaysia could further lay down a resolution like Thailand's Education Policy and 2005 Cabinet Resolution for Unregistered Person to ensure that undocumented children, including those with non-citizen parents, have access to education.

This study also proposes Malaysia to amend the wording in the Education Act 1967 and Federal Constitution similar to those in Thailand's National Education Act of B.E and 1997 Constitution, where rights to education as highlighted in those statutes are not limited to citizens. As previously discussed in this study, Article 12 of the Malaysian Federal Constitution is potentially part of the reason for the reservation of Article 28 of the CRC; thus, amending it would be a remarkable change to the life of stateless children in Malaysia. However, an amendment to the Federal Constitution requires a holistic approach where the government should first evaluate whether the groundwork such as teachers and facilities are ready to welcome stateless children. Without a stable groundwork, the amendment would not be practical and effective.

As for stateless children in rural areas, a few projects can be adopted in Malaysia, such as Thailand's Border Patrol Police Schools and the Welfare Schools. These projects focus on children who stay in remote areas by providing them with school supplies to help them gain knowledge (Selvakumaran et al., 2020). Malaysia may also consider implementing programmes such as the Foundation for Rural Youth (FRY) in Thailand. This programme

prepares the students by teaching them the Thai language before entering public schools (Save the Children International, 2021). Therefore, if it is a concern that stateless children would struggle in public schools for not being able to speak Bahasa Melayu, programmes as such would be of tremendous help. Being able to speak Bahasa Melayu would also help the children in terms of getting opportunities to work.

There are also sentiment issues that need to be considered before providing stateless children immediate access to national schools with the same rights as citizens. Thus, it was further recommended that the government to look into a soft approach to allowing organisations or individuals to assist the stateless children, especially in rural areas. Hence, Malaysia should create more collaborations between the MOE and NGOs to cover stateless children's rights to education, as it is impossible for the MOE to work on them. The joint efforts should also promote awareness to the public regarding these children's hardships and how their rights are being denied to avoid misconceptions about the stateless. Hence, the efforts such as Zero Reject Policy and SBJK should be reconsidered by amending the regulation and working hand in hand with NGOs to ensure that the issue can be resolved.

SUHAKAM had reported that governmental efforts concerning protecting a stateless person's rights are still inadequate and it was recommended for a more comprehensive approach to provide the stateless with basic rights (Human Rights Commission of Malaysia, 2018). On top of that, SUHAKAM had also insisted the government prioritise budgets for important areas such as education for all children for the National Budget 2018 (Human Rights Commission of Malaysia, 2018).

This study also found remarks by the United Nations. While urging Malaysia to improve its birth registration system, the United Nations Committee on the Rights of the Child emphasises that children who have yet to acquire their official documentation should still be entitled to basic services such as healthcare and education (CRC, 2007). Malaysia had also been suggested to revise its Education Act 1996 to enable children without a birth certificate to enrol in educational institutions in order to guarantee the right to education for all children regardless of their legal status (HRC, 2009). These remarks should be thoroughly considered by the government, although they were made years ago because according to UNESCO in its 2019 GEM Report, Malaysia is still making slow progress in making education more inclusive for children of migrants and refugees (Bernama, 2018).

Acknowledgement

The authors would like to thank the Faculty of Law, Universiti Teknologi MARA for the financial assistance and opportunity to experience the research and academic writing.

References

- Abdul Rashid, H. R. (2018). Zero Reject Policy to be Implemented Next Year: Maszlee. *New Straits Times*. <https://www.nst.com.my/news/nation/2018/10/426683/zero-reject-policy-be-implemented-next-year-maszlee>
- Allerton, C. (2014). Statelessness and the lives of the children of migrants in Sabah, East Malaysia. *Tilburg Law Review: Journal of International and European Law*, 28. http://eprints.lse.ac.uk/55806/1/Allerton_Statelessness-and-the-lives-of-the-children-of-migrants-in-Sabah_2014.pdf

- Allerton, C. (2017). Contested Statelessness in Sabah, Malaysia: Irregularity and the Politics of Recognition. *Journal of Immigrant & Refugee Studies*, 251. <https://www.tandfonline.com/doi/full/10.1080/15562948.2017.1283457>
- Bashir, S. (2021). "Press Comment: Statelessness Should Not Prevent Children from Receiving Formal Education" Malaysian Bar. <https://www.malaysianbar.org.my/article/news/press-statements/press-statements/press-comment-statelessness-should-not-prevent-children-from-receiving-formal-education>
- Berkeley, B. (2009). Stateless People, Violent States. *World Policy Journal*, 26(1), 5-6. <https://www.jstor.org/stable/40210101>
- Bernama. (2018). UNESCO: Malaysia's Progress on Education for Migrants and Refugees Too Slow, *New Straits Times* <https://www.nst.com.my/news/nation/2018/11/432904/unesco-malaysias-progress-education-migrants-and-refugees-too-slow>
- Bernama. (2018). Easier for Stateless Kids to Enrol in School Soon, *New Straits Time* <https://www.nst.com.my/news/nation/2018/10/420794/easier-stateless-kids-enrol-school-soon>
- Bernama. (2019). School for Stateless Kids, Inclusive Policy Among Pakatan Successes in First Year, Education Minister says. *Malay Mail*. <https://www.malaymail.com/news/malaysia/2019/04/30/school-for-stateless-kids-inclusive-policy-among-Pakatan-successes-in-first/1748229>
- Cambridge Advanced Learner's Dictionary & Thesaurus (Cambridge University Press) <https://dictionary.cambridge.org/dictionary/english/citizenship>
- Fry, G. W., Bi, H. (2013). The Evolution of Educational Reform in Thailand: The Thai Educational Paradox. *Journal of Educational Administration Vol 51*, 292. <https://www-emerald-com.ezaccess.library.uitm.edu.my/insight/content/doi/10.1108/09578231311311483/full/pdf?title=the-evolution-of-educational-reform-in-thailand-the-thai-educational-paradox>
- Grandi, F. (n.d.). Her Turn. UN High Commissioner for Refugees. <https://www.unhcr.org/herturn/>
- Hasni, N. A. S., Azman, N., & Ismail, M. N. (2021). Stateless Children's Access to Tertiary Education. *Selangor Humaniora Review*, 5(1), 30-39. <https://share.journals.unisel.edu.my/ojs/index.php/share/article/view/133/29>
- Hasni, N. A. S., & Azman, N. (2020). Statelessness of Adopted Children in Malaysia. *The 5th International Conference On Education, Islamic Studies and Social Sciences Research*. https://www.researchgate.net/publication/351354371_STATELESSNESS_OF_ADOPTED_CHILDREN_IN_MALAYSIA
- Human Rights Commission of Malaysia. (2018). *SUHAKAM Annual Report 2017*, <https://drive.google.com/file/d/1fTHb17EOI10UZedlB38v2t0W-VeS9q34/view>
- Human Rights Commission of Malaysia. (2019). *SUHAKAM Annual Report 2018*, <https://drive.google.com/file/d/1tvNwYpO3mWdBvJiyEb963tUklehdqilZ/view?usp=sharing>
- Human Rights Commission of Malaysia. (2020). *SUHAKAM Annual Report 2019*, <https://suhakam.org.my/wp-content/uploads/2021/02/SUHAKAM-AR2019-1.pdf>
- Kitchanapaibul, S., Apidechkul, T., Srichan, P., Mulikaburt, T., Singkhorn, O., Udplong, A., Upala, P., Chomchoei, C., Yeemard, F., Tamornpark, R., & Wongnuch, P. (2022) Status

- of the Stateless Population in Thailand: How does stigma matter in their life?. *PLoS ONE*, 17(3): <https://doi.org/10.1371/journal.pone.0264959>
- Liew, J. C. Y. (2019). Homegrown statelessness in Malaysia and the promise of the principle of genuine and effective links. *Statelessness and Citizen Review*, 1, 95. <https://statelessnessandcitizenshipreview.com/index.php/journal/article/download/13/11/>
- Lim, I. (2019). Reality Check for Malaysia-born Stateless Children on 'Special Citizenship' Route, *Malay Mail* <https://www.malaymail.com/news/malaysia/2019/03/26/reality-check-for-malaysia-born-stateless-children-on-special-citizenship-r/1736436>
- Loganathan, T., Chan, Z. X., Hassan, F., Ong, Z. L., & Majid, H. A. (2022). Undocumented: An examination of legal identity and education provision for children in Malaysia. *PLoS ONE*, 17(2). <https://doi.org/10.1371/journal.pone.0263404>
- Mayberry, K. (2014). Malaysia Stateless Children in Legal Limbo, *Al Jazeera* <https://www.aljazeera.com/indepth/features/2014/07/malaysia-stateless-children-legal-limbo-20147149248312626.html>
- Samad, M. M., & Affandi, M. B. N. H. (2018). Honouring Primary Education for Stateless Children: Analysis of Malaysian Legal Perspective and Current Practice. *International Journal for Studies on Children, Women, Elderly and Disabled*, 3, 34. https://www.ijcwed.com/wp-content/uploads/2017/11/IJCWED3_9.pdf
- Taib, M. R. (2012). *Education provision for young prisoners: to realise rights or to rehabilitate* [Doctoral dissertation, School of Law, Brunei University]. ProQuest. <https://search-proquest-com.ezaccess.library.uitm.edu.my/pqdtglobal/docview/1651908792/A2A008A16B814A7EPQ/6?accountid=42518>
- Milbrandt, J. (2011). Stateless. *Cardozo Journal of International and Comparative Law*, 20(1), 92. https://heinonlineorg.ezaccess.library.uitm.edu.my/HOL/Page?public=true&handle=hein.journals/cjic20&div=5&start_page=75&collection=journals&set_as_cursor=2&men_tab=srchresults
- Razali, M. R., Nordin, R., & Duraisingam, T. J. (2015). Migration and Statelessness: Turning the Spotlight on Malaysia. *Pertanika Journal of Social Science and Humanities* 23(S), 20-23. [http://www.pertanika.upm.edu.my/Pertanika%20PAPERS/JSSH%20Vol.%2023%20\(S\)%20Aug.%202015/02%20JSSH%20Vol%2023%20\(S\)%20Aug%202015_pg19-36%20\(JSSH\(S\)-0014-2015](http://www.pertanika.upm.edu.my/Pertanika%20PAPERS/JSSH%20Vol.%2023%20(S)%20Aug.%202015/02%20JSSH%20Vol%2023%20(S)%20Aug%202015_pg19-36%20(JSSH(S)-0014-2015)
- Mustaffa, A., Noura, C., Haque, M. M., & Nawang, N. I. (2022). Rights Of Undocumented Migrant Children To Education Under The Malaysian Legal Framework: Towards A Human Right Approach. *IJUM Law Journal*, 30(S1), 229–252. <https://doi.org/10.31436/iiumlj.v30iS1.705>
- Nortajuddin, A. (2020), *Malaysia's Stateless Children*, <https://theaseanpost.com/article/malysias-stateless-children>
- Park, J. K., Tanagho, J. E., & Gaudette, M. E. W. (2009). A Global Crisis Writ Large: The effects of being stateless in Thailand on hill-tribe children. *San Diego International Law Journal*, Vol 10(2), 532. https://heinonlineorg.ezaccess.library.uitm.edu.my/HOL/Page?collection=journals&handle=hein.journals/sdintl10&id=501&men_tab=srchresults
- Rahmat, N. E., Randawar, D. K., Jayabalan, S., Razak, M. U. A., & Azmi, I. I. (2021). Revisiting the Laws and Policies Related to Educational Rights of Stateless Children in Malaysia.

- International Journal of Academic Research in Progressive Education and Development*, 10(3), 1174–1184.
- Save The Children. (2015). *Education for All in Action in Thailand: A Case Study of Good Practice*.
https://resourcecentre.savethechildren.net/sites/default/files/documents/education_for_all_in_action_in_thailand_eng_resized.pdf
- Selvakumaran, K., Tie, F. H., & Mohd, Y. J. Z. (2020) A Legal Perspective on the Right to Education for Stateless Children in Selected ASEAN Countries, *Pertanika Journal for Social Science and Humanities*, 28(1), 361-377,
[http://www.pertanika.upm.edu.my/resources/files/Pertanika%20PAPERS/JSSH%20Vol.%2028%20\(1\)%20Mar.%202020/23%20JSSH-3389-2018.pdf](http://www.pertanika.upm.edu.my/resources/files/Pertanika%20PAPERS/JSSH%20Vol.%2028%20(1)%20Mar.%202020/23%20JSSH-3389-2018.pdf)
- The Thai National Commission for UNESCO, Ministry of Education Thailand. (2015). *Education for All 2015 National Review Report: Thailand*.
<https://unesdoc.unesco.org/ark:/48223/pf0000229878>
- The United Nations High Commissioner for Refugees (UNHCR), “About Stateless”,
<https://www.unhcr.org/ibelong/about-statelessness/>
- Ujvari, B. (2017). The Causes of Statelessness. *Hungarian Yearbook of International Law and European Law*, at pp 105-114.
<https://drive.google.com/file/d/1saS3X7JndyQN0nVtPbleL1rpXgoLDxQY/view?usp=sharing>
- United Nations. *The United Nations Convention on the Rights of the Child*.
<https://www.ohchr.org/sites/default/files/crc.pdf>
- United Nations Children’s Fund (UNICEF) Malaysia, *Reaching the Unreached*, (2015), at p 39,
<https://reliefweb.int/report/malaysia/reaching-unreached-assessment-alternative-education-programme-refugee-and> accessed 1 November 2020.
- United Nations Committee on the Rights of the Child (CRC). (2007). *United Nations Committee on the Rights of the Child: Concluding Observations, Malaysia*. (CRC/C/MYS/CO1).
<https://www.refworld.org/publisher,CRC,,MYS,468912822,0.html>
- United Nations Educational, Scientific and Cultural Organisation (UNESCO) Institute for Statistics. (2005). *Children out of School: Measuring Exclusion from Primary Education*,
<http://uis.unesco.org/en/files/children-out-school-measuring-exclusion-primary-education-en-pdf>
- United Nations High Commissioner for Refugees. (1954). *Convention relating to the status of stateless persons*,
https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf
- United Nations High Commissioner for Refugees (UNHCR). (2013). *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report - Universal Periodic Review: Malaysia*.
<https://www.refworld.org/docid/513d9a0e2.html>
- United Nations High Commissioner for Refugees (UNHCR) Malaysia, (n.d) *Ending Statelessness in Malaysia*,
<https://www.unhcr.org/ending-statelessness-in-malaysia.html>
- U. S. Department of State. (2002). *Thailand Annual Human Rights Reports Submitted to Congress*. 1072. <https://heinonline-org.ezaccess.library.uitm.edu.my/HOL/Page?handle=hein.intyb/huhelsnk0027&id=1093&collection=intyb&index=>

Villalobos, V. M. (2009). *Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos: Addendum: Mission to Malaysia*. (AHRC/11/8/Add.2) United Nations Human Rights Council. <https://www.refworld.org/docid/49f06efd2.html>